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Case Summary

Case Number: C 0500840
Case Caption: STATE OF OHIO vs. JAMES DERRICK ONEAL
Judge: Unavailable
Filed Date: 10/24/2005
Case Type: A105 - NOTICE OF APPEAL - CRIMINAL - POVERTY AFFIDAVIT
Total Deposits: \$ 0.00
Total Costs: \$ 123.00

Case Options



















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Case History

Doc	Image#	Date	Description	Amount
		5/22/2007	ENTRY FROM SUPREME COURT OF OHIO DECLINES JURISDICTION AND DISMISSES THE APPEAL	
		1/26/2007	COPY OF NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO FILED 01/16/07. S.C. # 07-0080	
		12/4/2006	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
		12/1/2006	JUDGMENT ENTRY AND DECISION AFFIRMING JUDGMENT TO TRIAL COURT B-9309022	
		12/1/2006	DECISION	
		8/7/2006	APPELLANT JAMES O'NEAL'S NOTICE OF SUPPLEMENTAL AUTHORITIES	
		8/2/2006	NOTIFICATION OF MERIT HEARING ON 10/03/06 IN COURTROOM B SENT TO JOHN GIDEON, MICHAEL KRUMHOLTZ AND PHILIP CUMMINGS	
		7/13/2006	BRIEF OF PLAINTIFF-APPELLEE	
		6/7/2006	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
		6/5/2006	ENTRY GRANTING EXTENSION OF TIME TO FILE APPELLEE'S BRIEF UNTIL 07/14/06. (FINAL EXTENSION)	
		6/1/2006	MOTION TO EXTEND TIME TO FILE BRIEF OF PLAINTIFF-APPELLEE	
		4/13/2006	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
		4/11/2006	ENTRY GRANTING EXTENSION OF TIME TO FILE APPELLEE'S BRIEF UNTIL 06/01/06.	
		3/30/2006	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	

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Page 1

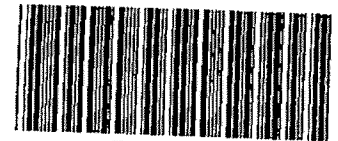
		3/29/2006	ENTRY GRANTING LEAVE TO FILE APPELLANT'S BRIEF INSTANTER	
		3/24/2006	MOTION OF APPELLANT FOR LEAVE TO FILE BRIEF INSTANTER	
		3/23/2006	BRIEF OF PETITIONER-APPELLANT	
		3/20/2006	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
		3/17/2006	ENTRY GRANTING EXTENSION OF TIME TO FILE APPELLANT'S BRIEF UNTIL 03/22/06.	
		3/15/2006	MOTION OF APPELALNT FOR EXTENSION OF TIME TO FILE BRIEF	
		2/10/2006	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
		2/8/2006	ENTRY GRANTING MOTION TO ENLARGE PAGE LIMITATION FOR APPELLANT'S BRIEF AND EXTENDING TIME FOR BRIEFS	
		1/30/2006	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
		1/27/2006	ENTRY GRANTING EXTENSION OF TIME TO FILE APPELLANT'S BRIEF UNTIL 02/15/06.	
		1/25/2006	MOTION OF APPELLANT FOR A PAGE LIMIT EXTENSION	
		1/25/2006	MOTION OF APPELLANT FOR EXTENSION OF TIME TO FILE BRIEF	
		12/12/2005	TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES FILED	
		12/12/2005	NOTICE OF FILING OF RECORD INCLUDING TRANSCRIPT OF PROCEEDINGS MAILED TO JOHN J. GIDEON, MICHAEL W. KRUMHOLTZ, JOSEPH T. DETERS AND PHILIP R. CUMMINGS	
		12/2/2005	COMPLETE TRANSCRIPT OF PROCEEDINGS B-9309022 1 VOL.	
		11/3/2005	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
	25	11/3/2005	ACCELERATED CALENDAR SCHEDULING ORDER, ENTERED. 12/23/05 RECORD DUE. 01/25/06 APPELLANT'S BRIEF DUE. 02/28/06 APPELLEE'S BRIEF DUE.	
		10/24/2005	COMMON PLEAS TRIAL COURT # B-9309022	
		10/24/2005	COPY SENT BY ORDINARY MAIL TO HAMILTON COUNTY PROSECUTOR	
		10/24/2005	DOCKET STATEMENT FILED. B-930022	
		10/24/2005	APPEAL - ON QUESTIONS OF LAW	
		10/24/2005	NOTICE OF APPEAL FILED.	
		10/24/2005	NO DEPOSIT REQUIRED-POV.AFF. JOHN JOSEPH GIDEON	0.00

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DSF



D65776018

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,
c/o Hamilton County Prosecuting Attorney
230 East Ninth Street, Suite 7000
Cincinnati, Ohio 45202,

Plaintiff-Appellee,

v

JAMES DERRICK O'NEAL,
#325-132
Mansfield Correctional Institution
1350 North Main Street
Mansfield, Ohio 44901-0788

Defendant-Appellant

APPEAL NO C050840

TRIAL NO B-939022

DEATH PENALTY CASE

NOTICE OF APPEAL OF JAMES DERRICK O'NEAL

Notice is hereby given that James Derrick O'Neal, Defendant-Appellant, hereby appeals to the Court of Appeals of Ohio, First Appellate District, Hamilton County, from the Decision Denying Defendant's Motion To Vacate Or Set Aside His Death Sentence in which the Court concluded that Defendant-Appellant is not mentally retarded, entered in this matter on September 26, 2004, a copy of the first and last pages of which are attached hereto

Respectfully submitted,

JOHN J. GIDEON (0008151)
(Trial Attorney)
250 East Stanton Avenue
Columbus, Ohio 43214-1268
(614) 888-9866


CLERK OF COURTS

O'NEAL v. STATE OF OHIO
Page 3

RECEIVED BY

ORIG, COMP, PARTIES, SUMMONS	
() CERT MAIL	() SHERIFF () WAVE
() PROCESS SERVER	() NONE
CLERKS FEES _____	TIC _____
SECURITY FOR COST _____	
DEPOSITED BY <u>8151</u>	
FILING CODE <u>A-105</u>	

and


MICHAEL W. KRUMHOLTZ (0009099)
(Co-Counsel)
Bieser, Greer & Landis, LLP
6 North Main Street, Suite 400
Dayton, Ohio 45402-1908
(937) 223-3277

COUNSEL FOR DEFENDANT-
APPELLANT


JOSEPH P. DETERS (0012084P)
Prosecuting Attorney

PHILIP R. CUMMINGS (0041497P)
Assistant Prosecuting Attorneys
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202-2174
(513) 946-3012

COUNSEL FOR PLAINTIFF-
APPELLEE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of James Derrick O'Neal was served on Philip R. Cummings, Assistant Prosecuting Attorney, Hamilton County Prosecuting Attorney's Office, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202, by regular U S Mail, postage prepaid, on this 17th day of October, 2005


JOHN J. GIDEON (0008151)
Counsel for Defendant-Appellant

o'neal noticeofappeal-cpc-October2005

Defendant's February 9, 1968 IQ score of 64 demonstrates that he was functioning at a subaverage intellectual level at age 14. However, Dr. Ruth Kaufman's 1968 Wechsler Intelligence Test for Children also indicated "superior" performance on tasks requiring judgment in social situations, and "effective functioning" in his knowledge of vocabulary and recall of information. *Id.* (See Dr. Nelson III Report, p.3, 3/21/05). Subaverage intellectual functioning is only one prong of the three prong conjunctive test enumerated in *Lott*. *Lott*, 97 Ohio St.3d 305 (2002). Dr. Kaufman's statement indicates that despite Defendant's sub-70 IQ, he was not suffering from significant limitations in two or more adaptive skills. This demonstrates that all three prongs of the three prong conjunctive test were not met in 1968. Thus, Defendant has not met his burden of proving by a preponderance of the evidence that he was mentally retarded before age 18. *Id.* at 307.

Conclusion

Defendant has failed to prove each prong of the conjunctive three prong test prescribed by the *Lott* Court by a preponderance of the evidence. *Id.* Therefore, Defendant is not mentally retarded, and his Petition to Vacate or Set Aside his death sentence is denied.

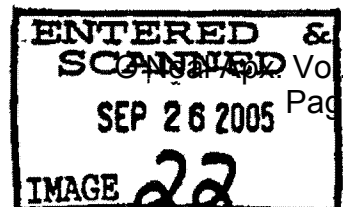
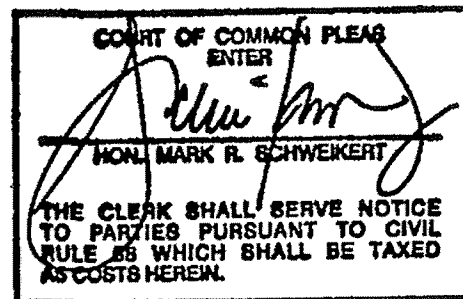
So Ordered.

ENTER

SEP 20 2005

MARK R SCHWEIKERT

Judge Mark R. Schweikert





D65789214

Page 1 of 2

C050840

First District
Court of AppealsForm I
Rev 3/95

Criminal Docket Statement

(Must Be Typed and filed In Duplicate and Served On Opposing Counsel)

1. Case Caption

State of Ohio,
Plaintiff-Appellee,

vs

James Derrick O'Neal,
Defendant-Appellant

2. Appeal No. C-

3. Trial No. B939022

4. Trial Judge: Hon Mark R Schweikert

5. Related Appeals and Previous Appeals* (see list below)

6. Date of Judgment/Order Appealed

From: September 26, 2005

7. Date Appeal Filed: October __, 2005

8. Counsel for Appellant

John J Gideon (0008151)
250 East Stanton Avenue
Columbus, Ohio 43214-1268
(614) 888-9866Michael W Krumholtz (0009099)
Bieser, Greer & Landis LLP
6 North Main Street, Suite 400
Dayton, Ohio 45402-1908
(937) 223-3277E-Mail addresses: johnngideon@sbcglobal.net /
mwk@gllaw.com

9. Counsel for Appellee

Philip R Cummings (0041497P)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202-2174
(513) 946-3012**FILED**
COURT OF APPEALS

OCT 24 2005

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTYE-Mail address: Phil.Cummings@hcpros.org

10(B) Criminal Status

Counsel was appointed for trial	Yes	No
Counsel was appointed for appeal	Yes	No
Stay was granted by trial court	Yes	No
(by U S District Court in habeas petition)		
Length of Sentence	<u>Death sentence</u>	

Counsel will make a reasonable effort to contact the client prior to merit hearing so that counsel can advise the court of the clients status and desire to proceed with the appeal

Yes No

If answered no, please explain

11. Record

There will be a partial transcript of proceedings filed Yes

The parts to be ordered are _____

There will be a complete transcript of proceedings filed Yes

If either of the above are applicable the court reporter's certification below must be completed.

If neither of the above are applicable then one of the following must be circled

There will be a statement filed pursuant to App R 9(C) Yes

There will be an agreed statement filed pursuant to App R 9(D) Yes

There is no transcript, statement or agreed statement to be filed Yes (Transcripts of 1995 death penalty trial already filed in October, 1996 as part of direct appeal, transcript

evidentiary hearing already filed prior to filing of post-hearing briefs)

Circling any of the above three will be deemed sufficient compliance with App. R. 9(C) and Local Rule 5.

12. Court Reporter's Certification

O'Neal Apx. Vol. XI
Page 7

The transcript as ordered consists of approximately _____ pages and pursuant to Local Rule 10, the transcript will be prepared and ready for filing on _____

Date _____ Signature _____

13. Brief

Upon filing of the complete record I request 60 days to file the brief and assignments of error

* Case No C-940652 pretrial appeal of dismissal of death penalty specification

Case No C-960392 direct appeal of conviction and sentence of death

Case No C-980247 appeal of first/original petition for postconviction relief

Case No C-040286 appeal of April 7, 2004 judgment of trial court dismissing second/successive petition for postconviction relief without evidentiary hearing

14. Nature of the Appeal

Please Check all That Apply and Be Specific Whenever Space is Provide

- | | | |
|---|---|--|
| <input type="checkbox"/> Arson | <input type="checkbox"/> DUI | <input type="checkbox"/> Sex Offense _____ |
| <input type="checkbox"/> Assault | <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Theft Offense _____ |
| <input type="checkbox"/> Attempt _____ | <input checked="" type="checkbox"/> Murder | <input type="checkbox"/> Traffic Offense _____ |
| <input type="checkbox"/> Automobile Offense _____ | <input checked="" type="checkbox"/> Death Penalty | <input type="checkbox"/> Weapons Offense _____ |
| <input type="checkbox"/> Burglary | <input type="checkbox"/> Post Conviction | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Complicity, Conspiracy | <input type="checkbox"/> Probation | |
| <input type="checkbox"/> Drug Offense | <input type="checkbox"/> Robbery | |

15. Probable Issues for Review:

- ☐
- Counsel was Recently Appointed and is Not Yet Able to Identify Probable Issue(s) For Review

---OR---

Please Check All That Apply and Provide Specific Information Whenever Space is Provided

- | | | |
|---|--|---|
| <input type="checkbox"/> Allied Offenses | <input type="checkbox"/> Prosecutor Search and Seizure | Trial Matters |
| <input checked="" type="checkbox"/> Constitutional Law | <input type="checkbox"/> Arrest | <input type="checkbox"/> Evidence |
| <u>Mental retardation and death penalty</u> | <input type="checkbox"/> Miranda | <input type="checkbox"/> Expert Witnesses |
| <input type="checkbox"/> Counsel - Effective Assistance | <input type="checkbox"/> Warrant | <input type="checkbox"/> Jury Instructions |
| <input type="checkbox"/> Crim. R 11 | Other _____ | Witnesses |
| <input type="checkbox"/> Expungement | <input type="checkbox"/> Sentencing | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> ID/Photos | <input type="checkbox"/> Speedy Trial | <input type="checkbox"/> Weight of Evidence |
| <input type="checkbox"/> Indictment/Complaint | <input type="checkbox"/> Sufficient Evidence/Crim R 29 | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Lesser Included Offenses | | |
| <input type="checkbox"/> Procedure/Rules | | |
| <input type="checkbox"/> Probation | | |

16. Cases and/or Statutes to be Discussed:Atkins v Virginia, 536 U S 304, 122 S Ct 2242, 153 L Ed 2d 335 (2002)State v Lott (December 11, 2002), 97 Ohio St 3d 303, 2002-Ohio-6625R C 2953 21 *et seq***17. Certificate of Service**

I certify that I have mailed or otherwise delivered a copy of this docket statement to all counsel of record or the parties if unrepresented

Date

10/17/05

Signature

John Eiden

COURT OF APPEALS

Judges
Rupert A. Doan
Lee H. Hildebrandt, Jr.
Robert H. Gorman
Mark Philip Painter
J. Howard Sundermann, Jr.
Sylvia Sieve Hendon

FIRST APPELLATE DISTRICT OF OHIO
William Howard Taft Law Center
12th Floor, 230 East Ninth Street
Cincinnati, Ohio 45202-2138

Mark E. Combs
Court Administrator

Molly Leonard
Assistant Administrator

(513) 946-3500

Fax (513) 946-3411

STATE OF OHIO,

Plaintiff-Appellee

vs..

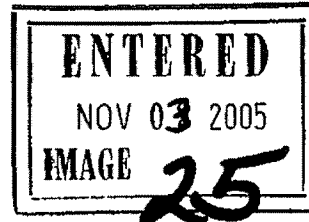
JAMES DERRICK O'NEAL,

Defendant-Appellant.



D65922089

APPEAL NO. C050840
TRIAL NO. B-9309022



ACCELERATED CALENDAR SCHEDULING ORDER

Having reviewed the notice of appeal and docket statement filed herein, and pursuant to Local Rule 12(2), it is the Order of this Court that this cause be placed on the Court's accelerated calendar.

It is Ordered that the complete record of this action be filed on or before 12/23/2005.
(See paragraphs one and two of the enclosed.)

The appellant's brief shall be filed on or before 01/25/2006.
The appellee's brief shall be filed on or before 02/28/2006.
(See paragraph four of the enclosed.)

Counsel who wish to submit the appeal to the Court without oral argument should submit a written request to the court at least three working days prior to the hearing.

NOTE: Enclosed with this Order are several admonitions. These admonitions should be reviewed.

To The Clerk:

Enter upon the Journal of the Court on November 3, 2005 per order of the Court.

By: _____

Presiding Judge

(Copy sent to counsel)

CASE NO	JUDGE	PLAINTIFF	DEFENDANT	SENT NOTICE TO
C 0500840	904	STATE OF OHIO	JAMES DERRICK ONEAL	JOHN JOSEPH GIDEON 250 EAST STANTON AVE COLUMBUS OH 43214-1268
C 0500840	904	STATE OF OHIO	JAMES DERRICK ONEAL	HAMILTON COUNTY PROSECUTOR 230 E NINTH ST, ROOM 7000 CINCINNATI OH 45202

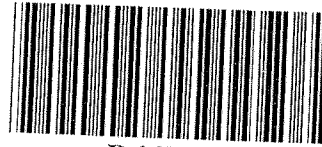
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NOV - 3 2005

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY



D65931064



D66320913

OHIO

TO BE SENT DIRECTLY TO THE

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

FILED
Criminal Division

DEC 2 2005

STATE OF OHIO, :

Plaintiff, :

Vs. :

JAMES DERRICK O'NEAL :

Defendant. :

Case No. B-9309022
C-050840

HAMILTON COUNTY
GREGORY HARTMANN
CLERK OF COURTS

S

COMPLETE TRANSCRIPT OF PROCEEDINGS

FILED
COURT OF APPEALS

DEC - 2 2005

Judith A. Mullen, Esq.
Phillip R. Cummings, Esq.

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

On behalf of the Plaintiff

John J. Gideon, Esq.
Michael W. Krumholtz, Esq.

On behalf of the Plaintiff.

BE IT REMEMBERED that upon the
motion of this cause, on May 17th, 2005, before
the Honorable MARK R. SCHWEIKERT, Judge of the
said Court of Common Pleas, the following
proceedings were had.

HAMILTON COUNTY
CLERK OF COURTS

O'Neal Apx. Vol. XI

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STATE OF OHIO
VERSUS
JAMES DERRICK O'NEAL
Case No. B-9309022
Case No. C-050840

I N D E X

DEFENDANT'S WITNESSES

Dr. Robert G. Tureen

Direct ExaminationPage 06, Line 14
Cross-examinationPage 36, Line 16
Redirect ExaminationPage 48, Line 08

E X H I B I T S

STATE'S EXHIBITS

Exhibit No. 1, Dr. Nelson's report

Marked for identification By counsel
Received into evidencePage 50, Line 10

Exhibit No. 2, CV, Dr. W. Michael Nelson, III

Marked for identificationBy counsel
Received into evidencePage 50, Line 10

Exhibit No. 3, O'Neal medical Chart

Marked for identificationBy counsel
Received into evidencePage 50, Line 10

Exhibit No. 4, ODRC Mental Health file, O'Neal

Marked for identificationBy counsel
Received into evidencePage 50, line 10

Exhibit No. 5, O'Neal Ohio Supreme Court decision

Marked for identificationBy counsel
Received into evidencePage 50, Line 10

Defendant's Exhibits:

Exhibit A, O'Neal school records

Marked for identification By counsel
Received into evidence Page 50, Line 12

Exhibit B, July 27, 1994 report

Marked for identification By counsel
Received into evidence Page 50, Line 12

Exhibit C, Tureen Report

Marked for identification By counsel
Received into evidence Page 50, Line 12

- - -

ALL OF THE EXHIBITS IN THE ABOVE CAUSE
ARE IN THE CUSTODY OF THE EXHIBIT CLERK.

1 MORNING SESSION, MAY 17, 2005

2 P-r-o-c-e-e-d-i-n-g-s

3 THE COURT: Let's go on record on
4 this. This is State of Ohio v. James
5 Derrick O'Neal. The defendant is not
6 present yet. He is on his way.

7 Maybe we should wait until he gets
8 here. We will do that.

9 MS. MULLEN: Your Honor, when the
10 defendant arrives, I would like to read
11 into the record the agreed stipulations
12 between the parties.

13 THE COURT: That's kind of where I
14 was going.

15 MS. MULLEN: I'm sorry.

16 THE COURT: I thought we had better
17 wait until he gets here.

18 MS. MULLEN: Yes.

19 (Pause in proceedings.)

20 THE COURT: Okay. Let's call State
21 of Ohio v. James O'Neal, Case Number
22 B9309022. Let the record reflect that the
23 defendant is present in court with his
24 counsel.

25 This matter is on today for a hearing

1 regarding the defendant's post-conviction
2 petition requesting a determination under
3 the Supreme Court case of *Atkins v.*
4 *Virginia*, that he is a mentally retarded
5 offender not subject to the death penalty.

6 The Court has previously ordered, at
7 the request of the parties, psychological
8 evaluations, and those reports have been
9 received. I have not reviewed these
10 reports. I did that on purpose because I
11 wasn't sure whether these were technically
12 the defense's evaluation, whether you were
13 going to offer them or not, and so although
14 I have them, but I haven't reviewed them.

15 Correct me if I am wrong, but I
16 believe that the defense has the burden in
17 this situation, so you would proceed first.

18 MR. KRUMHOLTZ: We have the
19 obligation in going forward.

20 Your Honor, we could call Dr. Tureen.

21 I think Ms. Mullen will be discussing
22 some stipulations that the Court may want
23 to have read for the record.

24 MS. MULLEN: The parties have agreed
25 to stipulate to the admissibility of all of

1 the doctors' reports, to Dr. Nelson's CV,
2 to Mr. O'Neal's medical chart, Mr. O'Neal's
3 mental health file, to the entire trial
4 record and transcripts, and to Mr. O'Neal's
5 school records.

6 MR. KRUMHOLTZ: That's correct,

7 THE COURT: What was final one?

8 MS. MULLEN: The school records.

9 THE COURT: And the defense accepts
10 all of those stipulations.

11 MR. KRUMHOLTZ: That's right, your
12 Honor. And with those stipulations, we
13 would call Dr. Tureen.

14 ROBERT TUREEN, Ph.D.

15 being first duly sworn, was examined and testified
16 as follows:

17 THE COURT: Good morning, doctor.

18 THE WITNESS: Good morning.

19 DIRECT EXAMINATION

20 BY MR. KRUMHOLTZ:

21 Q. Sir, please give us your full name.

22 A. Robert Tureen.

23 Q. What is your current professional
24 address?

25 A. Mayfield Clinic, 506 Oak Street,

1 Cincinnati.

2 Q. How are you currently employed?

3 A. I'm an associate of the Mayfield
4 Clinic?

5 Q. What is the Mayfield Clinic, Dr.
6 Tureen.

7 A. It's a group of private
8 practitioners, including 15 neurosurgeons and
9 myself.

10 Q. What is your professional area?

11 A. I'm a clinical psychologist with a
12 specialist in neuropsychology.

13 Q. Are you licensed as a psychologist in
14 the state of Ohio?

15 A. Yes.

16 Q. How long have you been licensed in
17 this state, sir?

18 A. Since '73 or '74, whenever the
19 licensure went through.

20 Q. Doctor, is there such a thing as
21 board certification for psychologists?

22 A. Yes.

23 Q. Please explain what board
24 certification is in the case of a psychologist.

25 A. There are several specialty areas in

1 which people are board certified in psychology by
2 the American Board of Professional Psychologists.
3 And this is a recognition via testing and
4 accomplishment of our peers that you have reached
5 a certain state of expertise in your area. I'm a
6 diplomate with the American Board of Clinical
7 Neuropsychologists, and that was granted in 1986.

8 Q. When you say you're a diplomate,
9 does that mean you have attained board
10 certification?

11 A. Yes, it does.

12 Q. How long have you been with the
13 Mayfield Clinic?

14 A. Seven years

15 Q. How long have you been in the private
16 practice of psychology, doctor?

17 A. Well, I would consider my tenure with
18 the Mayfield Clinic being in private practice of
19 psychology.

20 Q. If you would, please describe for us
21 your undergraduate educational background in
22 college.

23 A. I received my bachelor degree from
24 the University of Michigan, and I majored in
25 psychology there. Then I obtained my master's

1 degree from Akron State, which is now Akron State
2 University, and then went onto Wayne State
3 University in Detroit to obtain my Ph.D. I did a
4 clinical internship at LaFayette Clinic in
5 Detroit, which no longer exists. I did a two-year
6 postdoctoral fellowship at the University of
7 Oklahoma Medical Center.

8 Q. Dr. Tureen, what is neuropsychology?

9 A. That is a branch of psychology which
10 specializes in evaluating and treating the
11 behavioral reactions of changes in the brain
12 function or disordered brain function.

13 Q. If you would, please describe for the
14 Court the nature of your practice of psychology as
15 it exists today.

16 A. As it exist today, I'm doing almost
17 exclusive evaluation of individuals who are either
18 known to have impaired brain function or thought
19 to have impaired brain function.

20 Q. Have you had any experience in your
21 practice of psychology in evaluating people to
22 determine whether or not they are mentally
23 retarded?

24 A. Yes, that's pretty much run through
25 the practice over the years.

1 Q. If you would generally, please
2 describe your experience in evaluating people on
3 this issue of mental retardation for the Court.

4 A. The basic approach is to use a
5 battery of tests to establish a level of
6 intellectual functioning. We further try to
7 understand where that mental retardation might be
8 stemming from. For instance, is it coming from
9 longstanding brain damage? A learning disorder
10 that may be the result of brain damage? And we
11 may or may not look at school records. I don't
12 work with children that much -- I don't work with
13 children at all. Excuse me. I work with adults,
14 so it's hard to get hold of school records
15 frequently. But if you can, that's also helpful
16 in establishing when the retardation in and of
17 itself occurred. Then you look at the functional
18 activity, how the person functions on a day-to-day
19 basis.

20 Q. Doctor, setting aside this particular
21 gentleman, James O'Neal, setting him aside, what
22 kind of experience -- how many cases have you been
23 involved in evaluating people as to whether or not
24 they are mentally retarded?

25 A. We are talking hundreds. I can't

1 give you a specific number. And by terms of
2 mentally retardation, we are talking about the
3 problems beginning early on before the age of 18
4 and not acquired as an adult.

5 Q. Have you ever been qualified as
6 expert witness in giving testimony in the Hamilton
7 County Court of Common Pleas?

8 A. Yes, I have.

9 Q. Can you give us an estimate as to the
10 number of times in which you have qualified as an
11 expert in giving testimony in Hamilton County
12 Common Pleas Court?

13 A. Probably a dozen times.

14 Q. Let me discuss some work with you
15 that you have performed in this particular case
16 involving Mr. O'Neal. First, of all as it relates
17 to your testimony today, when you were first
18 contacted and asked to conduct an evaluation in
19 this matter pertaining to the question of whether
20 or not James O'Neal is mentally retarded?

21 A. It was I think around August of 2004.

22 Q. Prior to that initial contact on this
23 issue of mental retardation, had you had any
24 involvement with James O'Neal?

25 A. Yes, I did.

1 Q. If you would, describe for the Court
2 what that involvement consisted of?

3 A. Back in 1994 at the time of the
4 initial trial, I was called in by another
5 psychologist who was involved in the evaluation of
6 Mr. O'Neal. The basis for being called is that
7 that psychologist was concerned that there was
8 evidence in his evaluation to suggest that there
9 was some brain disorder, brain damage, if you
10 will, exhibited by Mr. O'Neal. And therefore, as
11 an expert in that area, I was asked to come in and
12 evaluate Mr. O'Neal.

13 Q. In your work involving Mr. O'Neal
14 back at that time, 1994, did you conduct any type
15 of interview with Mr. O'Neal?

16 A. Yes, I did.

17 Q. Did you conduct any testing of Mr.
18 O'Neal back at that time?

19 A. Yes, I specifically used a battery of
20 tests to look at the possibility of symptoms of
21 brain damage or brain dysfunction. He had already
22 had some testing by Dr. Chiappone, who had seen
23 him previously.

24 Q. With regard to the testing that you
25 did relating to Mr. O'Neal in 1994, please

1 indicate for the Court what testing that you did
2 and what the results of those tests were. And if
3 it helps to refer to your earlier report, please
4 feel free to do that, Doctor.

5 A. I administered him a test with a
6 screening battery of various types of mental
7 function, including memory and language and what
8 we refer to as spacial relations.

9 There are also two measures of which
10 are particularly important, which reference what
11 we call executive functioning. That is the
12 ability to take information in, process that
13 information, plan, decide, and effectively carry
14 out a plan of action to achieve a goal. Even more
15 importantly, to be able to shift one's way of
16 thinking or a person's focus when there is a
17 change in the environment. The environment is
18 changing. Our brain is constantly making
19 adjustments to the environment and evaluating
20 feedback information.

21 That was particularly important in
22 this instance, because Mr. O'Neal showed an
23 incredible amount of rigidity in thinking. He
24 became very perseverative. And what I gave him
25 stuck in his head. No matter whatever the

1 information may be, that this is not an
2 appropriate response as we are testing him, he was
3 unable to make the change. He was unable to test
4 out alternative hypotheses that we were using in
5 the field.

6 Q. Was there any other testing that you
7 performed on Mr. O'Neal back at that time?

8 A. Yes, that was the Wisconsin Card
9 Sort. That was the test that I used to evaluate
10 that particular aspect; the Porteus Mazes.

11 I also did some -- administered the
12 Rey Figure -- that's R-e-y -- which is a spacial
13 planning process, which is very sensitive to the
14 existence of brain disturbance.

15 The Hooper Visual Organization Test,
16 again, is a measure which assesses the ability to
17 visually organize spacial stimuli and to recognize
18 objects, and the inability to do that reflects
19 some disturbance in the basic brain processing and
20 basic abilities as we would normally assess them.

21 Where his strengths were was mostly
22 in his verbal expression in language.

23 Q. Now, have we covered, Doctor, not
24 only the tests you administered back in '94, but
25 the results of those tests from your standpoint as